

01/19/2023

Following the decision in KNL, a former stepparent appealed the decision dismissing his petition to adopt. Child's biological father was never involved in Child's life. Former Stepfather and Mother married after Child's birth. They later divorced. They executed documents with provisions for shared custody and child support. Mother and Current Stepfather married. Former Stepfather filed a petition seeking partial custody. Mother and Current Stepfather filed to terminate Biological Father's rights. Both stepfathers filed petitions to adopt. While acknowledging that Former Stepfather might have stood in loco parentis, the trial court noted that Mother's parental rights remained intact, and her consent would be necessary for an adoption. The trial court dismissed Former Stepfather's petition and granted Current Stepfather's petition.

Initially, a panel of the Superior Court affirmed. Former Stepfather filed for reargument *en banc*. In his first issue, Former Stepfather argued the trial court erred in dismissing his petition for lack of standing. He argued his standing comes from his undisputed role in loco parentis. He also argued that Mother's lack of consent should not have barred his petition from being heard on the merits. The trial court distinguished this case from KNL when it observed that there was no agency involved. With Mother's rights still intact, the trial court found her consent, or lack thereof, was sufficient to justify the dismissal of the Former Stepfather's petition.

The Superior Court reviewed the Supreme Court's recent decision in KNL, noting that the Court had rejected the connection between the threshold question of standing and the substantive impact of consent requirements under the Adoption Act. Accordingly, the Superior Court vacated both the dismissal of Former Stepfather's petition and the granting of Current Stepfather's petition.

The Superior Court went on to address Former Stepfather's argument that it was error for the trial court to have failed to appoint legal counsel and/or a guardian ad litem for the Child. The Court acknowledged that relied upon case law referred to termination of parental rights cases, not adoption petitions. The Court concluded that legal representation is warranted for Child here, where Child is over the age of 12, and remanded with direction that counsel be appointed with consideration of whether there is a conflict between Child's legal and best interests.

03/06/2023

With conflict between the two parents' positions on decisions related to the administration of brain death evaluations, Hershey Medical Center petitioned the Court alleging the child was a dependent child under the Juvenile Act. Four-year-old Child was brought to the hospital due to respiratory illness and fever. She suffered multiple cardiac arrests and developed hypoxic brain injury. The hospital's pediatric neurology physicians performed a "cessation of brain function" exam. They determined the absence of brain function was permanent, global, severe, and irreversible. The first of two required brain death evaluations was performed. Mother agreed with the performance of the second. Father opposed. The hospital averred dependency and requested that the trial court enter an order authorizing a confirmatory brain death evaluation as well as termination of ongoing medical care if brain death criteria were met. The trial court declared the child dependent, set an emergency hearing, appointed a GAL, and authorized the GAL to have access to the child and her medical information. No challenge was made to the hospital invoking the Juvenile Act or the court declaring M.A.P. dependent without an adjudicatory hearing.

Father attended the hearing and questioned the doctor. The Court specified that the hearing would decide whether the second test would occur, not whether treatment would be stopped. While testimony and argument were limited to the question of the second test, the resulting order authorized that the confirmatory test be completed and authorized the hospital to discontinue ongoing medical care in accordance with the accepted medical standards. An amended order added language to the effect that discontinuance of care occur "with discussion of the family".

Father appealed and filed an application to stay. Eventually, his amended emergency application for stay was granted. The Superior Court vacated the order in part, as Father was denied the opportunity to be heard with respect to discontinuation of ongoing medical care. The trial court acted as though the second question could and would be addressed separately if the test confirmed brain death. In practice, if two tests confirm brain death, the hospital would proceed in accordance with medical standards to discontinue ongoing medical care. The Superior Court held that the stay would remain in place for seven days following the confirmatory test to offer Father the opportunity to challenge the results and the related decision to discontinue life support.

03/31/2023

Father appealed the trial court order adjudicating his daughter dependent and finding her to be a victim of abuse due to Father's failure to act. Failure to provide Father with an effective interpreter during the child abuse hearing was found to be prejudicial error. The Superior Court vacated the portion of the trial court's order finding Father to be a perpetrator of child abuse and remanded for a new abuse hearing.

Father and Child are Guatemalan immigrants. Child is Spanish speaking; however, Father speaks a Guatemalan dialect known as Q'eqchi'. The 13-year-old Child was pregnant and living with a 19-year-old male. During initial investigations, she reported her father was aware of her relationship and living arrangement. She was placed in foster care through an order for protective custody. Father was interviewed by a Spanish speaking caseworker and the report was indicated with Father listed as the perpetrator of child abuse. An adjudicatory hearing was held with both Q'eqchi' and Spanish interpreters. Child denied her father was aware of her living arrangement and testified that she did not recall ever saying that he knew and was okay with the situation. Even with the Q'eqchi interpreter, Father's counsel was not confident he was able to understand the questions or that the translation was competent.

When the presumption is applied to identify a perpetrator of abuse, the individual must have the opportunity to rebut that presumption. Father argued on appeal that without proper interpreter services, he could not respond to the allegations that he knew about his daughter's whereabouts. The Superior Court agreed, vacating the portion of the order finding that Father was a perpetrator and remanding for a new abuse hearing. The rights attendant to the need for accurate interpreter services are well-established in the criminal context and apply to all judicial proceedings. That right has been extended to non-criminal, administrative proceedings. Without an effective interpreter, he was not given the opportunity to rebut the prima facie presumption.

06/09/2023

The family became known to the Agency in July 2019 when Mother tested positive for oxycodone at the birth of the youngest of the four children at issue. The children were taken in custody when the mother of the youngest three children and Father, who was father to all four children, were arrested on drug-related and weapons charges. Mother of the oldest child was also incarcerated at that time. After three years of dependency and the children's placement in Agency custody, the trial court denied the Agency's second request for a goal change to adoption. The trial court noted progress in portions of each parent's plans.

The Superior Court concluded that despite those strides, the trial court abused its discretion in denying the requests for goal changes. Where the trial court noted each measurable step forward, the Superior Court highlighted the significant distance to reunification as well as the children's happiness in their stable, pre-adoptive homes. The Superior Court reversed and remanded with direction to change the goals to adoption.

06/15/2023

Petitioners, including a birth mother, foster and adoptive parents, and the State of Texas, challenged ICWA as unconstitutional on multiple grounds. The United States Supreme Court upheld the majority of the challenges brought against ICWA and determined that no petitioning party had standing to raise the remaining claims.

**Interest of H.H.N., 296 A.3d 1258 (2023)**

**Child's Representation  
TPR/Goal Change**

06/13/2023

Children were adjudicated in July 2019 with counsel appointed to serve as GAL and legal counsel. In January 2022, separate legal counsel (TPR Counsel) was appointed. In June 2022 DHS filed for termination of parental rights and a goal change to adoption. A hearing was held on November 2022. Children's TPR counsel had not yet interviewed the children. The trial court continued to take testimony with the intent of holding a second day of testimony. During testimony, Children's TPR Counsel was noted to be inattentive and distracted. The judge dismissed him from the courtroom before DHS's first witness completed testimony. The GAL expressed concern regarding Counsel's absence. The judge relayed an understanding that as long as Children's TPR Counsel was present on the second day of testimony to offer their report of their conversation with the children, they would fulfill their purpose. Children's TPR Counsel appeared on the second day of the hearing and reported the children's positions. TPR and goal change to adoption were granted and Mother appealed.

The holdings in this case make it very clear that the obligations of counsel for children go beyond attempting to ascertain preferences and reporting to the court. Representation requires zealous client-directed advocacy on the child's behalf. Before making the decision to appoint one attorney to serve as both best interests and legal counsel, the court must make and document on the record a determination of whether there is a conflict between the roles. Deprivation of Children's right to counsel in TPR proceedings is structural error. This circumstance, where the GAL was only appointed to serve as the best interest attorney, was distinguished from *Interest of A.J.R.O.*, 270 A.3d at 570 (2022), where counsel had been appointed to serve both roles. In that case, the Superior Court was able to remand on the issue of documenting whether a conflict existed. In this case, the Court vacated the decrees and remanded for a new TPR hearing.

06/21/2023

Mother was already involved with CYF when Child was born and tested positive for cocaine at birth. Child was removed by emergency order after reports of violence in the home directly impacted Child. Child was placed with kin and remained there for over two years of dependency predating CYF filing for termination. The trial court found CYF had proved grounds for termination under 23 Pa. C.S. § 2511(a)(2), (5), and (8). The trial court also held that CYF failed to meet the burden under 23 Pa.C.S. § 2511(b) that termination would serve the needs and welfare of the child. CYF and the child through the GAL appealed, arguing that the trial court was in error to deny termination when CYF had presented clear and convincing evidence that termination best served the needs and welfare of Child. A three-judge-panel of the superior court affirmed the trial court in a split decision.

The Pennsylvania Supreme Court granted review to 1) clarify whether trial courts must evaluate whether a bond is necessary and beneficial and whether severing the bond would cause the child extreme emotional consequences, not just whether a bond exists, and 2) whether the superior court erred in upholding the trial court's denial under the specific circumstances of this case. A group of 35 amici joined in support of appellants, including child welfare agencies, child advocates, parent advocates, and psychologists. A group of 12 amici joined in support of Mother, including child advocates, parent advocates, and law professors. Argument centered on whether the proper standard was whether termination and severance of a bond with a parent would cause an "adverse effect" or "extreme emotional consequence".

The Supreme Court began with the plain language of the statute which requires the court to focus on the child's development, physical and emotional needs and welfare. With no specific method for making that determination articulated in the statute, they looked to case law. The Supreme Court confirmed these decisions are to be made on a case-by-case basis and from a child-centered perspective. Courts must consider intangibles and factors include the specific needs of the specific child. Analysis must consider whether the child is in a pre-adoptive home and whether they have a bond with their foster parents, Courts must further conduct an analysis of any bond the child has with the parent. The Supreme Court reviewed its two most consequential related decisions on the matter, *In re E.M.*, 620 A.2d 481 (1993) and *In re T.S.M.*, 71 A.3d 251, 252 (2013). The Supreme Court found that neither lower court in this case considered whether termination would sever a necessary and beneficial parental bond, despite their review of case law that mandates such consideration. The record does not establish whether there was consideration given to other required factors such as whether the child was in a pre-adoptive home. The Supreme Court does not explicitly announce "extreme emotional consequence" as the standard but does note that severing a "necessary and beneficial bond" would likely have such a result. The burden remains on the moving party to prove by clear and convincing evidence that termination serves the needs and welfare of the child, and therefore, that any existing bond with the parent is not necessary and beneficial.

The Supreme Court held the superior court erred by affirming the order that was based on a legally incorrect application of the statute. The Supreme Court declined to direct reversal of the denial and instead remanded for further proceedings to review and further develop the record.

06/20/2023

While this is a custody matter, it is directly relevant to the Dependency Courts as it appears to limit the forum for findings pertinent to Special Immigrant Juvenile Status findings to the Dependency Courts. In this case, Mother filed a custody complaint seeking sole legal and physical custody as well as an order making affirmative SIJ findings. The trial court reconsidered its original order directing that the court did not have jurisdiction over the non-citizen family. It granted sole legal and physical custody to Mother but specifically did not find that the relevant SIJ facts were present. Mother appealed and while she did not file a concise statement of errors contemporaneously with her notice, she ultimately complied when directed and the Superior Court did not dismiss despite the technical noncompliance. The Superior Court also declined to dismiss, as the trial court suggested, on the basis that her Rule 1925 statement did not properly preserve her issues for appeal. Rather, the Superior Court acknowledged her filing was specific, more detailed than necessary, and raised one clear issue for appeal. Ultimately, the Superior Court did not agree with Mother that the trial court's decision regarding Children's eligibility for SIJS was erroneous; however, the Superior Court offered a reasoning significantly different than the trial court.

The Superior Court reviewed the federal code and the regulations outlining eligibility for SIJS, 8 U.S.C.A. § 1101(a)(27)(J) and 8 C.F.R. § 204.11(b), (c), and discussed *Osorio-Martinez v. Attorney General United States of America*, 893 F.3d 153, 163 (3d. Cir. 2018) for its emphasis on the rigorous eligibility criteria. The Superior Court determined that the children had not been adjudicated dependent or placed in the legal custody of someone appointed by a state or juvenile court. The Superior Court affirmed the trial court order on the grounds that the children are not eligible for SIJS. In their request for reargument, Appellees argue the State Court lacks the authority and jurisdiction to determine whether a child is eligible for SIJ classification under federal law. The request for reargument was denied in August 2023. Petition for Allowance of Appeal was granted by the PA Supreme Court on 11/27/2023 on the issues of:

- (1) Whether the Superior Court, when it determined the Children are not statutorily eligible for special immigrant juvenile status (SIJS) under federal law, misapprehended the role and authority of Pennsylvania courts when such determinations are within the exclusive authority and jurisdiction of the United States Citizenship and Immigration Services (USCIS).
- (2) Whether the Superior Court erred in concluding the Children are not statutorily eligible for SIJS notwithstanding the fact the trial court awarded sole custody to Mother.
- (3) Whether the trial court erred in holding Mother failed to meet her burden to prove the predicate findings for SIJS: a) Children's reunification with Father is not viable due to abandonment, abuse, neglect, or a similar basis under Pennsylvania law; and b) it is not in the Children's best interest to return to Guatemala.

See also, *Rivas v. Villegas*, 300 A.3d 1036 (2023), decided in July 2023 while the petition for reargument on *Velasquez* was pending. *Rivas* is another case where the litigant sought to have SIJ findings made by the custody arm of the state trial court. In *Rivas*, the trial court did not allow the presentation of all evidence on the SIJ findings and then determined sufficient credible evidence was not submitted to support the requested findings. The Superior Court vacated the trial court's opinion and remanded for a new hearing to address the predicate factual findings with respect to the SIJ status determination.

**S.F. v. Pennsylvania Department of Human Services, 298 A.3d 495 (Pa. Commw. Ct. 2023)**

**Due Process  
Abuse**

07/11/2023

In this high impact, matter of first impression case, a special education teacher who accepted entry into an ARD program on charges related to an indicated child abuse report filed a petition for review in the nature of a complaint in equity, mandamus, and for declaratory relief against the Pennsylvania Department of Human Services (DHS), the DHS Secretary, and the Pennsylvania Professional Standards and Practices Commission (SPC). The Commonwealth Court concluded that “Petitioner and other teachers must be afforded a pre-deprivation hearing before an impartial ALJ before being listed as a perpetrator in an indicated report on the ChildLine Registry and in a founded report, based on ARD.” S.F. at 532–33.

**Interest of M.M., 302 A.3d 189 (2023)**

**Standing in Dependency  
Finding of Abuse**

08/30/2023

A dependency petition was filed following orders for protective custody of two surviving siblings after the death of the third sibling. The circumstances of Sibling’s death resulted in indicated reports of abuse against Mother and Friend. Mother was also criminally charged with third-degree murder and endangering the welfare of a child. Friend lived in the home with Mother and the children in order to help Mother provide care for the children. After several continuances beginning in May 2022 and culminating in January 2023, an Adjudicatory hearing was held.

On the first hearing date, Friend appeared pursuant to a witness subpoena and was appointed counsel. On each of the following hearing dates set for adjudication, Friend’s counsel objected to the Court’s jurisdiction over Friend and deficiencies with notice. Following a substantive hearing, the trial court adjudicated one of the two surviving siblings dependent. The other sibling could not be located at that time. The trial court also made a finding that the deceased child was a victim of child abuse and upgraded the indicated status to a finding of abuse with respect to both Mother and Friend. Friend filed a timely appeal.

The Superior Court reviewed the procedure and applicable laws related to the listing of child abuse in the statewide child abuse registry, emphasizing that a founded status requires a judicial determination. The Superior Court then reviewed the question of who has standing in a dependency matter, noting that all participants agreed Friend was not a parent, custodian, or person serving in loco parentis whose care and control of the child was at issue. While Friend joined the household to assist in caring for the children, Mother had not discharged her parental duties, leaving Friend no more legally responsible for the sufficiency of the children’s care than a nanny or teacher.

A person can be a perpetrator for purposes of the CPSL without being a caregiver for the purposes of the dependency court. While the Juvenile Act and the CPSL work alongside each other and are “complimentary in nature” a dependency petition is but one of several judicial adjudications that may result in a finding of abuse. One must still be a party to the particular cause of action in order for the court to have the authority to make the finding. No amount of process or culpability can overcome the lack of party status.

Practice Note: The final footnote acknowledges dependency cases where findings of abuse have been sought against stepparents who have been treated as parties. The Superior Court notes that none appear to have appealed on the jurisdictional issue and that the line of cases might be distinguished.

The Agency appealed the trial court's order finding a lack of reasonable efforts to prevent the removal of Child. Following the death of Child's sibling, Child was removed from the home and later adjudicated dependent. At adjudication, the trial court deferred the finding regarding reasonable efforts, and a separate hearing was held. All parties agreed to the separate hearing which resulted in the finding being made more than 60 days after removal. The timeliness issue was never raised before the trial court and was waived on appeal. The Agency had prior referrals on the family that had closed without cooperation. The Agency was actively involved with the family for four months preceding Sibling's death.

The Court's extensive and meticulous review of the Agency's actions during that time revealed systemic shortcomings that formed the basis of the no reasonable efforts finding. The Superior Court opinion reviews the trial court's extensive findings. They include failures to follow timelines required by Agency policy and failures to adequately implement Family Engagement Initiative tools at their disposal.

With a note that the trial judge was in the best position to gauge the credibility and explanations provided, the Superior Court did not find that the trial judge's decision was manifestly unreasonable. The Superior Court relied on the trial judge's opinion in affirming her order.

11/13/2023

DHS filed a dependency petition with a request for finding of abuse against Parents. Trial court denied the petition, found Parents did not abuse Child, and declined to certify the testifying doctor as an expert in child abuse medicine. The Superior Court reversed and remanded, finding clear and convincing evidence to support both adjudication and the findings of abuse.

The Superior Court opinion offers a succinct review of the standard for qualification of an expert witness. The Superior Court concluded the record in this case did not support the trial court's determination that the doctor's qualifications were insufficient to admit his testimony and opinion as an expert witness. The court did give consideration to the doctor's testimony and the Superior Court found that DHS did not establish prejudice warranting a new adjudicatory hearing on this basis.

The Superior Court found error in the trial court's determination that DHS had not established "bodily injury" as necessary for a finding of abuse. The Superior Court reviewed case law surrounding the inference of substantial pain in relation to the use of force. Here, where the injuries themselves were undisputed and included multiple fractures in a seven-month-old child, the trial court abused its discretion when it concluded DHS did not provide clear and convincing evidence of substantial pain. The Superior Court also concluded that the trial court erred in declining to find abuse because of the possibility that something other than abuse had caused the injuries. There was no evidence of record that either of the proposed alternative causes were the cause in this case. Once clear and convincing evidence of abuse is present, the parents as caregivers face a rebuttable presumption that they did not inflict the abuse. They declined to testify or present any evidence, and therefore, failed to rebut the presumption.

The Superior Court then addressed the question of adjudication of dependency, disagreeing with the trial court's argument that even if the parents perpetrated the abuse, they are not presently unable to provide proper parental care or control. The Superior Court cites to relevance of prognostic evidence to a finding of dependency. In re E.B., 83 A.3d 426, 433 (2013)



**Interest of A.R., 2023 PA Super 243 (2023)**

**Termination of Parental Rights  
Intellectual Disability**

11/28/2023

Mother appealed the trial court's order involuntary terminating her parental rights and changing the goal to adoption. Child had extensive health issues at birth including a rare genetic disorder marked by cardiac issues. Mother was residing in an assisted living facility due to her intellectual disability. Child remained in the same foster home where she was placed when she was four months old. After over a year of Child remaining in care, the Agency filed for goal change to adoption and termination of parental rights. Hearings were held over the course of several days culminating in the trial court's decision to terminate after over two years of Child's placement.

The Superior Court considered Mother's arguments and disagreed with each in turn. Specifically, the Superior Court found that the trial court appropriately considered Mother's equal protection argument and did not terminate parental rights solely on the grounds of intellectual disability. The Superior Court further found the trial court appropriately considered the question of bonds and found the evidence supported a finding that termination serviced Child's best interests as well as a goal change to adoption.

**Interest of K.C., 2023 PA Super 245 (2023)**

**Goal Change to PLC**

11/29/2023

Child was diagnosed with failure to thrive and after multiple hospitalizations, was adjudicated dependent. After being placed in the custody of CYF, Child was discharged from the hospital to a foster home. Child remained in that foster home. Approximately three years later, CYF requested a goal change to adoption and termination of parental rights. The child was having regular unsupervised visitation with parents. CYF later requested a goal change to permanent legal custodianship, which the trial court granted. The trial court found that despite the recent progress, there was no evidence that after three years, Parents were capable of sustaining the progress. The Superior Court held that the trial court's findings were supported by the record and sufficient to prove that reunification or adoption was not best suited to Child's safety, protection, and physical, mental, and moral welfare. Trial court decision affirmed.